

Ralph Cheatham, Gent. Appellant.

Mary Lamplugh Wid. Administratrix
of Dr. Tho. Lamplugh, and also Ad-
ministratrix de Bonis non of George } Respondent.
Pockley Gent.

The Respondent's C A S E.

21. Junii, 1690.

THE Appellant being an Attorney at Law, and Agent for the said George Pockley, applied to Dr. Lamplugh to borrow 2500*l.* to pay off a Debt of 2500*l.* due to Mrs. Leonox Smith, and charged on his real Estate by his Uncle John Pockley's Will, who thereby gave his real Estate so charged to the said George Pockley for Life, with Remainder to the Issue Male of the said George, with divers Remainders over to his other Brothers and their Issue Male; and the Appellant actually received of Dr. Lamplugh 1600*l.* And to secure the Repayment thereof with interest, Appellant promised that the said George Pockley should Mortgage the said Estate to Dr. Lamplugh, which by Rental by him produced to Mr. Squire the Dr's Counsel, appeared to be of the value of 448*l.* per Ann. and that he the said Appellant would likewise procure an Assignment of the said Mrs. Smith's Debt charged as aforesaid on the said Estate.

That the Appellant omitted to procure such Assignment, and afterwards pretended that 344*l.* 10*s.* 4*d.* only of the said Sum of 1600*l.* lent by Dr. Lamplugh as aforesaid, was paid towards discharge of the said Debt due to Mrs. Smith, and that the Remainder of the said 1600*l.* was applied to the Use of the said George Pockley.

That 13 Martii 1693. the said George Pockley dyed Intestate, and Administration of his Personal Estate was granted to Dr. Lamplugh as principal Creditor; but the Appellant endeavoured to set up a Will, pretended to be made by the said George Pockley, and that the Appellant was thereby made his Executor; and Dr. Lamplugh afterwards exhibiting his Bill in the Court of Exchequer against the Appellant, to have an Account of the Rents and Profits of the real Estate of the said George Pockley, received by the Appellant from the Year 1687, the Appellant in bar of Dr. Lamplugh's demand insisted upon an Account stated between him and the said George Pockley, the 16th of February 1693. on the Ballance whereof there was pretended to be due to the Appellant the Sum of 2138*l.* 7*s.* 5*d.* which Account was vacated and set aside upon hearing of the said Cause 21 Feb. 1698. and an Account was then directed of the said George Pockley's Estate received by the Appellant, upon which Dr. Lamplugh brought in his Charge, and the Appellant his Discharge, and laid them before the Deputy Remembrancer of the said Court.

In Trinity Vacation 1700. a Commission was taken out for Examination of Witnesses, and several Witnesses were Examined on both sides; but Appellant pretending he had more Witnesses to examine, in Hillary Vacation next following a second Commission issued and Witnesses were examined on both sides. And Appellant afterwards pretending he had more Witnesses to examine, at the setting down of Causes after Trinity Term 1701. prayed a third Commission, which was granted him, but he did not proceed to examine one Witness thereupon.

After this, Dr. Lamplugh took out Eleven Summons's for the Appellant to attend the Deputy and make out his Discharge, which he failed to do; and therefore 6 Junii 1702. the Deputy made his Report *ex parte*, and certified, that the Appellant had received out of Pockley's Estate 3154*l.* 15*s.*

25. Junii 1702.

Appellant by his Counsel informed the Court that the occasion of his not attending the Deputy, was that Mr. Humphreys his Solicitor was dead, and had all his Papers in his Hands, whereupon the Court ordered the Deputy to review his Report; which the Appellant was to procure a week before Michaelmas Term following, but Appellant never attended the Deputy thereupon or procured any Report.

23. Feb. 1702.

Appellant obtained a second Order for the Deputy to review his Report, and for another Commission, which was to be returned the First day of Easter Term following, so as the Cause might be heard that Term, and accordingly took out a Commission and examined several Witnesses, but neither returned it, nor attended the Deputy to review his Report.

28. Junii, 1703.

Appellant moved for further time, which after so many Delays was denied him, and the Court thereupon confirmed the said Report and ordered the Moneys thereby certified to be received by the Appellant, to be paid to Doctor Lamplugh.

23. Jan. 1704.

The Court of Exchequer was informed by the Respondents Counsel that Doctor Lamplugh her Husband was dead, and that she was his Administratrix, and also Administratrix *de bonis non* of George Pockley, and upon her Motion the said Court ordered Appellant to pay her the said Moneys Reported due to her said Husband as aforesaid.

But to prevent the Payment thereof, the Appellant brought his Bill of review in the said Court of Exchequer; and that Court having affirmed their said Decree, he hath appealed to your Lordships Judgments, on pretence that the Deputy Remembrancer did not make him any Allowance for Repairs and Taxes; Which, if true, was occasioned by his own Default in not appearing before the said Deputy Remembrancer, tho' often summoned so to do.

That on such Pretence the Appellant after so long a distance of time and so many Delays, endeavours to perplex this Respondent with a long Account of his Payments and Disbursements, on account of the said Pockley, which happened in her Husbands Life time, and to which she is wholly a Stranger, and the Appellant having omitted to perfect his Discharge before the said Deputy within the time limited by the Court of Exchequer, whilst her Husband was living, who was able to Controvert the same

Respondent hopes the Appellant shall not now be permitted to ravel into the said Account; and that she shall have the benefit of the said Decree, and that the said Appeal shall be dismissed with Costs.

William Ettricke.